IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 1201 of 2001()

STC.NO.86/1999 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD

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APPELLANT: COMPLAINANT:

T.K.JOY, AGED 38 YEARS, S/O.KUNJU VAREED, RESIDING AT 'GLORIA', PUDUSSERY AMSOM AND DESOM, WALAYAR, PALAKKAD TALUK, PALAKKAD DISTRICT, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER M.K.DEVASSYKUTTY, MEKKATTUPARAMBIL, PARIYARAM, MUKUNDAPURAM.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: ACCUSED & STATE:

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1. T.P.DEVADASAN, AGED 45 YEARS, S/O. LATE P.K.PAZHANI,RESIDING AT KAKKARATHPADI, CHERAYA, KONGAD, PALAKKAD DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.T.K.CHINNAN FOR R1

P.P. SRI PUZHAKKARA MUHAMMED FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 3-7-2007 , THE COURT ON 03/07/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 1201 of 2001

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Dated this the 3rd day of July, 2007

JUDGMENT

The appeal is filed by the complainant against the judgment in S.T.C.No.86/99 on the file of the Court of the Chief Judicial Magistrate, Palakkad. By the impugned judgment the trial court acquitted the 1st respondent stating that the appellant had failed to prove the case against the 1st respondent. The case of the appellant is that the 1st respondent borrowed an amount of Rs.20,000/- from the appellant and when the appellant demanded the amount, the 1st respondent issued a cheque for Rs.20,000/- and when it was presented for encashment, the same was dishonoured stating "non-availability of funds". After complying the statutory formalities, the complaint was field. To prove the case of the appellant, power of attorney holder of the appellant was examined as PW1 and Exts.P1 to P8 were marked. After closing the evidence adduced on behalf of the appellant, the 1st respondent was questioned under section 313 Cr.P.C. He denied the allegation in the complaint and stated that he had no transaction with the appellant and he had not issued Ext.P1 cheque in favour

of the appellant. He also stated that he had some dealings with one Radhakrishnan and Ext.P1 cheque was issued to him. After considering the entire evidence, the trial court acquitted the 1st respondent holding that the 1st respondent was found not guilty under section 138 of the Negotiable Instruments Act. Against the above finding, the appeal is filed.

2. The specific case of the appellant is that the trial court had not considered the presumption available to the appellant under section 139 of Negotiable Instruments Act. It is also contended that the trial court ought to have accepted the evidence of the appellant and found the 1st respondent guilty under section 138 of the Negotiable Instruments Act.

3. It is to be noted that PW1 has no direct knowledge with regard the transaction between the appellant and the 1st respondent. He had no knowledge about the acquaintance of the 1st respondent with the appellant. The trial court found that the evidence on the side of the appellant was not sufficient to arrive at a finding that the appellant advanced Rs.20,000/- to the 1st respondent. The trial court also found that the appellant had failed to discharge the initial burden caused upon him and hence question of rebutting the presumption under section 139 of the Negotiable Instruments Act do not arise for consideration.

4. In the above circumstances, this Court is of the view that the impugned judgment requires no interference by this Court. Hence, the appeal fails and it stands dismissed.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. 11 of 1999

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Judgment
31-5-2007